

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3920 of 1999

to

FIRST APPEAL No 3988 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

Hon'ble MR.JUSTICE M.H.KADRI

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5: No

BHARVAD DANABHAI VASHRAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR GM AMIN for appellants

Mr. P.G. Desai, Government PLEADER for respondent-State in First Appeals Nos. 3920/99 to 3954/99
Mr. R.C.Kodekar, AGP, for Respondent-State in First appeals Nos. 3955/99 to 3988/99

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 15/09/1999

COMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellants, who are original claimants, have challenged legality and validity of the common judgment and award dated February 9, 1999, rendered by the learned Assistant Judge, Sabarkantha, at Himatnagar, in Land Reference Cases Nos. 3741 of 1989 to 3809 of 1989, claiming enhanced compensation.

1.1 All the abovereferred to land reference cases were heard and decided together and Land Reference Case No 3795 of 1989 was treated as main case in which the parties had led common evidence. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. The agricultural lands of village Kidiad, Taluka Malpur, District Sabarkantha, were needed for the public purpose of 'Vatrak Jalagar Yojna'. A proposal was sent to acquire the said lands for the said public purpose, which was scrutinised by the Government and notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was published in the Government Gazette on January 16, 1975. The owners of the lands, which were subject matter of notification under Section 4(1) of the Act, had filed their objections. The Land Acquisition Officer, after considering the objections of the land owners, had submitted his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands, which were specified in notification published under Section 4(1) of the Act, were needed for the public purpose of 'Vatrak Jalagar Yojna'. Therefore, declaration under Section 6 of the Act was made and published in the Government Gazette. Interested persons were, thereafter, served with notices under Section 9(3) of the Act for determination of compensation. Pursuant to the notices under Section 9(3) of the Act, the owners of the lands under acquisition claimed compensation before the Special Land Acquisition Officer at the rate

of Rs.10/per sq.mtr. The Special Land Acquisition Officer, on the basis of materials placed before him, made his award on March 31, 1976 and offered compensation for the acquired lands of village Kidiad at the rate of Rs.3300/- per Acre for the irrigated lands and Rs.2000/per Acre for the non-irrigated lands, and also offered compensation of super-structure situated on the acquired lands as per the Schedule of Rates (SOR) fixed by the Government. The owners (original claimants) of the acquired lands were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate looking to the fertility and development of the acquired lands as well as the market rate prevailing on the relevant date, and were entitled to higher compensation. Therefore, they filed written applications before the Special Land Acquisition Officer under Sections 18 of the Act requiring him to forward the said applications to the District Court for determination of compensation. The Special Land Acquisition Officer referred the said applications to the District Court, Sabarkanatha, at Himatnagar, which came to be numbered as Land Acquisition Cases Nos. 3741 of 1989 to 3809 of 1989. Before the Reference Court, the claimants claimed compensation at the rate of Rs.10000/- per Are, i.e. Rs.10/- per sq.mtr. It was pleaded by the claimants in their applications that, looking to the fertility and development of the acquired lands, compensation offered by the Special Land Acquisition Officer was grossly inadequate. It was further pleaded by the claimants that the Special Land Acquisition Officer had not taken into consideration market value of trees standing on the acquired lands and value of super-structure and wells situated on the acquired lands.

3. The Special Land Acquisition Officer filed his common reply at Exh.7, inter alia, contending that the acquired lands were not having building potentiality and compensation offered by the Special Land Acquisition Officer was just and adequate. It was further averred that the applications filed by the claimants are barred by the principles of estoppel and delay. It was pleaded that a just and adequate compensation has been awarded by the Special Land Acquisition Officer and, therefore, the applications be dismissed with costs.

4. The Reference Court, by an order passed below Exh.5, consolidated all the land acquisition reference cases and the evidence was led in Land Acquisition Reference No.3795 of 1989, which was treated as the main reference case. Upon rival contentions raised by the parties, the Reference Court raised common issues for

determination at Exh.6. The claimants-appellants, in support of their case and to substantiate their claim of Rs.10/- per sq.mtr., examined Pujabhai Jivabhai Bharwad, at Exh.16, Khemabhai Nakhabhai at Exh.148 and Ramsinh Kanabhai Bharwad at Exh.152. The claimants also produced documentary evidence consisting of 7/12 extracts of the acquired lands at Exh.21 to Exh.147, previous award of the Reference Court with regard to acquired lands of village Medi Timba at Exh.70, sale deed of the land of village Fansarel at Exh. 18, and price list of Agricultural Produce Market Committee of Village Malpur, at Exh. 154, showing the price of various agricultural produces as prevailing in the year 1975-76 and 1976-77. The opponent, i.e. Acquiring Body and the Special Land Acquisition Officer did not examine any witness nor did produce any documentary evidence before the Reference Court.

5. Before the Reference Court, at the time of hearing of the arguments, as no evidence was led with regard to value of super-structure standing on the acquired lands, the claimants did not press Reference Cases Nos. 3810 of 1989 and 3817 of 1989, which related to enhanced compensation with regard to super-structure and, therefore, the Reference Court dismissed the abovereferred to two reference cases as not pressed.

6. The Reference Court, on over all appreciation of oral as well as documentary evidence, discarded evidence of the claimants with regard to yield of the agricultural produces of the acquired lands. The Reference Court also discarded the evidence of sale deed produced by the claimants at Exh.18 on the ground that there was gap of 19 years between the sale transaction of Exh.18 and publication of notification under Section 4(1) of the Act. Further, the Reference Court, for determining the market value of the acquired agricultural lands of village Kidiad relied upon the previous award Exh.17, which was with respect to acquired lands of village Medi Timba. The acquired lands of village Medi Timba which were subject matter of previous award Exh.17 were acquired by notification published under Section 4(1) of the Act on December 2,1982 and the Reference Court in award Exh.17 had determined market value of the acquired lands of village Medi Timba as on December 2, 1982, at the rate of Rs.5.50 per Are. As there was gap of seven years between the two notifications, i.e notification of the present acquired lands which was published on January 15,1975 and notification of acquired lands of village

Medi Timba which was published on December 2, 1982, the Reference Court gave deduction at the rate of 10% every year and determined the market value of the present acquired lands at the rate of Rs.165/- per Are for the irrigated lands and Rs.110/- per Are for the non-irrigated lands. The Reference Court also awarded solatium at the rate of 30% and statutory interest under Section 28 of the Act, which has given rise to the present appeals in which the appellants-original claimants are claiming enhanced compensation at the rate of Rs.10/- per sq.mtr.

7. We have heard Mr. G.M. Amin, learned counsel for the appellants. Mr. P.G. Desai, learned Government Pleader, assisted by Mr. Mr. R.C.Kodekar learned Assistant Government Pleader, for the Acquiring Body. Learned counsel, Mr. G.M. Amin, appearing for the appellants, and Mr. P.G. Desai, learned Government Pleader, have taken us through entire evidence on record produced before the Reference Court.

8. Learned counsel for the appellants has submitted that the Reference Court erred in relying upon the previous award Exh.17 in determining market value of the acquired lands of village Kidiad because notification by which the acquired lands of village Medi Timba which were subject matter of award Exh.17 came to be published first, i.e. in the year 1982, and, therefore, award Exh.17 could not have been relied upon by the Reference Court for determination of market value of the acquired lands of village Kidiad. It is submitted that previous award Exh.17 related to acquired lands of village Medi Timba and the present acquired lands of village Kidiad were situated at long distance and, therefore, award Exh.17 was not comparable. It is further submitted by learned counsel for the appellants that the claimants had led cogent and reliable evidence with regard to agricultural income of the acquired lands and had produced the price list of Malpur Agricultural Produce Market Committee at Exh.154 and the Reference Court has erred in not placing reliance on oral as well as documentary evidence produced by the claimants with regard to income of the agricultural produces raised on the acquired lands. It is pleaded that in absence of any other reliable evidence in the nature of sale deed, or opinion of expert, the Reference Court ought to have relied upon the evidence with regard to agricultural yield of the acquired lands. In support of the submission, learned counsel for the appellants placed reliance on the decision of the Supreme Court in the case of Special Land Acquisition Officer, Davangere vs. P.

Veera Bhadarappa, reported in AIR 1984 Supreme Court 774. Learned counsel for the appellants submitted that the claimants have claimed reasonable amount of compensation at the rate of Rs.10/per sq.mtr and, therefore, the appeals should be allowed.

9. Learned Government Pleader, Mr. P.G. Desai, who is assisted by learned Assistant Government Pleader, Mr. R.C.Kodekar, has vehemently submitted that determination of market value of the acquired lands by the Reference Court is quite just and adequate and, therefore, no interference is called for by this Court in these appeals. It is vehemently submitted by learned Government Pleader that the claimants had not led any reliable evidence with regard to income of the acquired agricultural lands and, therefore, in absence of any other evidence, the Reference Court was justified in relying upon the previous award Exh.17 for determination of market value of the acquired lands. Lastly, it is submitted by the learned Government Pleader for the respondents that a just and reasonable compensation has been awarded to the claimants for the acquired lands and the appeals be dismissed with costs.

10. The submission of the learned counsel for the appellant that the Reference Court erred in relying upon previous award Exh.17 which related to the acquired lands of village Medi Timba for determination of market value of the present acquired lands, deserves to be accepted. The acquired lands, which were subject matter of Exh.17, came to be acquired by notification dated December 2, 1982 published under Section 4(1) of the Act. The lands of village Medi Timba which were subject matter of award Exh.17 were not at all comparable with the present acquired lands of village Kidiad. Moreover, there was gap of seven years between issuance of two notifications and, therefore, the Reference Court ought not to have relied upon the previous award Exh.17 for determination of market value of the acquired lands of the present appeals, as it was not proximate in point of time to the notification published under Section 4(1) of the Act in the present case.

11. The Apex Court, in the case of Special Land Acquisition Officer, Davangere vs. P. *Veera Bhadarappa*, reported in AIR 1984 Supreme Court 774 has ruled as under:

"The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4 (1) and the methods of valuation may be: (1) Opinion of experts; (2)

The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired, or, of the lands adjacent to those acquired and possessing similar advantages; and (3) A number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available."

The claimants had led sufficient evidence with regard to agricultural income which they derived from the acquired lands of village Kidiad. The claimants' witness No 1, Pujabhai Jivabhai Bharwad, Exh.16, deposed that the present lands were situated on the banks of river Vatrak and Ahu and all the lands were irrigated lands. According to the witness, the claimants used to raise three crops in a year. The claimants' witness No.2, Ramsinh Kanabhai Bharwad, Exh.152, deposed that on the acquired lands, and the claimants used to raise crops of cotton, ground-nut, tuwer, udad, castor, etc. He also deposed that the claimants used to raise crop of cotton and were getting crop of cotton of 60 mounds per one acre and the price of cotton per 20 kg. was Rs.300/- to Rs.325/- at the relevant time. It is also deposed by the said witness that the claimants were raising crop of ground-nut on the acquired lands and the yield of ground nut per bigha was 35 mounds and the price of one mound was Rs.100/-. Witness Ramsinh also deposed that the claimants also used to raise crop of maize, and the net yield of maize per bigha was 55 mound and price of maize per 20 kg was Rs.60/-. The witness also claimed that the claimants used to raise crop of paddy and the yield of paddy per bigha was 70 mounds and price of 20 kgs paddy was Rs.60/-. The witness was cross examined but his evidence with regard to yield of agricultural produce was not challenged by the opponents during his cross examination. To substantiate their case of agricultural yield of the acquired lands, the claimants produced 7/12 extracts at Exh.21 to Exh.156, which support the claimants' case that they used to cultivate cotton, maize, paddy, etc. on the acquired agricultural lands. As per the evidence of the claimant, Ramsinh, Exh.152, the claimants were raising crop of cotton. Income of yield of cotton was Rs.60 per Are, whereas ground nut was Rs.45/- per Are and Maize was Rs.40.30 per Are. Total yield of above three crops as deposed by claimant Ramsinh would come to Rs.159.30 ps which is rounded off at

Rs.160.00 per one Are. If we deduct 50% of Rs.160.00, because of uncertainty and exaggeration made by the claimants, even then, gross income of the yield of three crops would come to Rs.80.00 per Are. As per the decision of the Apex Court in the case of State of Gujarat vs. Rama Rana and others, reported in 1997 (3) GLR 1954, 50% is to be deducted towards cost of cultivation and, therefore, the net agricultural income would come to Rs.40/- per Are. As per the decision of the Apex Court in the case of Rama Rana (supra), in case of agricultural income, multiplier of 10 can be adopted to determine market value of the acquired lands. If multiplier of 10 is applied to the net income of agricultural yield, it would come to Rs.400/- per Are. In our opinion, the claimants were getting agricultural income of Rs.400/- per Are which is equivalent to Rs.4/- per sq.mtr. The claimants were awarded Rs.1.00 per sq.mtr. Hence, they are entitled to Rs.3.00 per sq.mtr as additional compensation. It is borne out from the evidence of the claimants that all the lands were having facility of irrigation and, therefore, we assess the lands acquired as irrigated lands. The finding of the Reference Court treating some of the acquired lands as irrigated and some of the acquired lands as non-irrigated is, therefore, set aside and it is hereby held that all the acquired lands were irrigated lands. We, therefore, determine market price of irrigated lands at Rs.400/- per Are i.e. Rs.4.00 per sq.mtr. The finding of the Reference Court that the claimants would be entitled to compensation at the rate of Rs.165/- per Are in respect of the acquired lands is, accordingly, modified.

12. As a result of foregoing discussion, the appeals are partly allowed. We hold that the market value of the acquired agricultural lands of village

relevant date, i.e. publication of Section 4(1) notification, at Rs.4.00 per sq.mtr. The appellants are entitled to statutory benefits. The claimants are also entitled to solatium at the rate of 30% on enhanced compensation and interest on the enhanced compensation from the date of taking over possession for one year at 9% and, thereafter at 15%. The Office is directed draw decree in terms of this judgment. There shall be no order as to costs.

(swamy)